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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,140	02/05/2004	Kevin Himberger	RSW920030086US1	8439
45832 7590 10/28/2008 DILLON & YUDELL LLP 8911 N. CAPITAL OF TEXAS HWY., SUITE 2110 AUSTIN, TX 78759				
EXAMINER				
KIM, JUNG W				
ART UNIT		PAPER NUMBER		
2432				
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10/28/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/774,140

Applicant(s)

HIMBERGER ET AL.

Examiner

JUNG KIM

Art Unit

2432

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 28-32 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1, 3-5 and 28-32 is/are rejected.
7) ☐ Claim(s) 2 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/5508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

1. This Office action is in response to the amendment filed on 7/14/08.
2. Claims 1-5 and 28-32 are pending.

Response to Amendment

3. The provisional double patenting rejection is withdrawn as the terminal disclaimer overcomes the provisional double patenting rejection.
4. The 112, 2nd paragraph rejections to claims 6, 15 and 24 are withdrawn as these claims are canceled.

Response to Arguments

5. Applicant's arguments with respect to the amended claims 1, 2-5 and 28-32 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 28-32 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 28-32 are directed to a computer readable medium. Applicant's specification identifies embodiments wherein computer

product inventions comprising a computer readable medium having computer readable program code embodied therein are embodied completely on software, or embodied completely in a communication medium, or propagation medium, or infrared medium, or optical fiber, or paper, or suitable medium upon which the program is printed. (See Specification, pg. 4, lines 2-18). Software is descriptive material per se and is not statutory because computer programs claimed as computer listings per se, i.e., the descriptions or expressions of the programs, are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized. Propagation or communication medium is not recognized by the Office as one of the 4 statutory categories of invention. And a program printed on paper is merely nonfunctional descriptive material stored on a printing medium. It is not statutory since no requisite functionality is present to satisfy the practical application requirement.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 3-5, 28 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cox et al. US 6,738,814 (hereinafter Cox) in view of Goldstone US 20020101819 (hereinafter Goldstone)

10. As per claims 1, 3, 4 and 5, Cox discloses a method for processing communication traffic, said method comprising

- a. Detecting an anomaly in communication traffic within a communication network (col. 4:28-30);
- b. In response to a detection of an anomaly occurred in said communication traffic, applying a blocking measure A, a blocking measure A & B, a blocking measure A & IB to said communication traffic for stopping said anomaly (4:31-40; application of a blocking measure A & B and blocking measure A & IB is interpreted to be equivalent to a blocking measure A);
- c. in response to a determination that said anomaly reoccurs, reimposing said blocking measure A & B on said communication traffic and temporarily removing said blocking measure A & IB from said communication (4:54-60)
- d. wherein said blocking measure A & IB is a less restrictive blocking measure than said blocking measure A & B (denying a request is less restrictive than denying a request, limiting the number of messages and shutting down services);
- e. wherein said detecting further includes detecting a pattern in a value of at least one protocol field associated with said communication (4:30-32);

f. wherein said detecting further includes detecting whether or not a flow rate of said anomalous traffic has exceeded a predetermined threshold. (4:55-56)

11. Cox discloses comparing a requested connection to existing connection for a match for each request and denying a request if there exists a match (col. 4:31-40), but Cox does not disclose determining whether or not said anomaly reoccurs after said blocking measure A & B has been temporarily removed; in response to a determination that said anomaly does not reoccur, canceling said block measure A & B from being applied to said communication traffic and enforcing said blocking measure A & !B on said communication traffic. Goldstone discloses a method for preventing a denial of service attack, whereby when an attack is associated with an IP address, a ban is placed on requests from the IP address; after verifying that the attack has been thwarted, the banned IP address is lifted. Paragraph 46-47. It would be obvious to one of ordinary skill in the art at the time the invention was made to determine whether or not said anomaly reoccurs after said blocking measure A & B has been temporarily removed; and in response to a determination that said anomaly does not reoccur, canceling said block measure A & B from being applied to said communication traffic and enforcing said blocking measure A & !B on said communication traffic. One would be motivated to do so to enable the system to return to a secure normalcy as taught by Goldstone. Paragraphs 46-47. The aforementioned cover the limitations of claims 1 and 3-5.

12. As per claims 28 and 30-32, they are claims corresponding to claims 1 and 3-5, and they do not teach or define above the information claimed in claims 1 and 3-5. Therefore, claims 28 and 30-32 are rejected as being anticipated by Cox for the same reasons set forth in the rejections of claims 1 and 3-5.

Allowable Subject Matter

13. Claim 2 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Communications Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JUNG KIM whose telephone number is (571)272-3804. The examiner can normally be reached on Monday thru Friday, from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gilberto Barron can be reached on 571-272-3799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Jung Kim/
Patent Examiner, AU 2432

/Gilberto Barron Jr/
Supervisory Patent Examiner, Art Unit 2432